IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29-10-2007

Coram :

The Hon'ble Mr. Justice ELIPE DHARMA RAO
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition Nos.44921 and 44922 of 2006

W.P.No.44921 of 2006

1. Union of India rep. by the
   Government of Pondicherry through
   Chief Secretary to Government, Pondicherry.

2. The Secretary to Government for Labour
   Chief Secretariat, Pondicherry.

3. The Commissioner-cum-Joint
   Secretary to Government (Labour)
   Gandhi Nagar, Pondicherry.

4. Mr.Rattan Singh
   Commissioner of Labour,
   Labour Department, Pondicherry.

5. The Under Secretary to Government (Labour)
   Labour Department,
   Government of Pondicherry,
   Pondicherry - 1. … Petitioners

vs.

1. Central Administrative Tribunal
   Additional Bench, Madras rep. by its Registrar

2. S.Maadasamy, S/o. P.Subbiah

3. Mr. P.S.Krishnamurthy
   Jt. Chief Inspector of Factories (on adhoc basis)
   Pondicherry - 9. .. Respondents

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W.P.No.44922 of 2006

1. Union of India rep. by the
   Government of Pondicherry through
   Chief Secretary to Government, Pondicherry.

2. The Secretary to Government for Labour
   Chief Secretariat, Pondicherry.

3. The Additional Secretary to Government (Labour)
   Labour Complex, Vazhudavur Road,
   Gandhi Nagar, Pondicherry - 9. Petitioners

vs.

1. Central Administrative Tribunal
   Additional Bench, Madras rep. by its Registrar

2. S.Maadasamy, S/o. P.Subbiah

3. Union Public Service Commission
   rep. by its Secretary,
   Dholpur House, New Delhi. .. Respondents

W.P.No.44921 of 2006 : Writ Petition, seeking certiorari is filed by the petitioners, under Article 226 of the Constitution of India, to call for the records relating to the order of the first respondent Tribunal in O.A.No.218 of 2005, dated 04.07.2006 and quash the same.

W.P.No.44922 of 2006 : Writ Petition, seeking certiorari is filed by the petitioners, under Article 226 of the Constitution of India, to call for the records relating to the order of the first respondent Tribunal in O.A.No.814 of 2005, dated 04.07.2006 and quash the same.

For Petitioners : Mr.K.K.Sasidharan, GP (Pondicherry)
For Respondents : Mr.Karthik for M/s. Karthick, Mukundan, & Neelakantan for R2

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O R D E R

S.TAMILVANAN, J

Aggrieved by the order, dated 04.07.2006 made in O.A.No.218 of 2005 by the Central Administrative Tribunal, Madras Bench, the petitioners herein have preferred W.P.No.44921 of 2006. As per the impugned order, the Tribunal has set aside the order, dated 15.03.2005 passed by the petitioners herein and directed them to post the second respondent herein

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as Joint Chief Inspector of Factories (JCIF) within a period of two weeks from the date of receipt of a copy of the order.

2. W.P.No.44922 of 2006 has been preferred by the petitioners herein against the order, dated 04.07.2006 made in O.A.No.814 of 2005 on the file of the Central Administrative Tribunal, Madras Bench. The Central Administrative Tribunal for the reasons stated in the impugned order, has allowed the Original Application and the recruitment rule made by G.O.Ms.No.6, dated 08.03.2005, equating the post of Principal Group 'A' (Senior Scale) with the post of JCIF was also set aside with the liberty to initiate the process of formulating recruitment rules in accordance with law.

3. It is not in dispute that the second respondent / applicant initially joined the service in the Government of Pondicherry as a Craft Instructor in the Labour Department on 03.11.1975 and was appointed as Group Instructor on regular basis, subsequently, promoted as Inspector of Factories on 27.09.1982 and as Principal, Group 'A' (Junior Scale) on regular basis with effect from 25.08.1989. On 26.07.2001, he was promoted as Joint Chief Inspector of Factories (in short JCIF) on regular basis as per procedure. Aggrieve by the said promotion of the second respondent / applicant, the third respondent in W.P.No.44921 of 2006, Sri.P.S.Krishnamurthy, who was promoted as Principal, Group 'A' (Junior Scale) subsequent to the promotion of the second respondent / applicant, submitted a representation before the competent authority, based on which, the Government initiated steps to convene a review DPC, but the same was rejected by the UPSC. Then the second respondent / applicant was issued promotion order as JCIF and joined duty in the said post on 26.07.2001. The said promotion was challenged by Sri.P.S.Krishnamurthy in O.A.No.795 of 2001, but the same was dismissed by the Tribunal on 29.07.2001. According to the petitioners, the Government of Pondicherry has also sent a proposal to UPSC for amendment of the recruitment rules equating the post of Principal, ITI held by Sri.P.S.Krishnamurthy, the third respondent, with that of JCIF.

4. Pursuant to the draft recruitment rules equating the posts, the second respondent / applicant herein was transferred from JCIF and posted as Principal, Group 'A' (Senior Scale), on 30.09.2003. The said order was challenged by the second respondent / applicant in O.A.No.869 of 2003, which was allowed by the Tribunal on 06.01.2004. Though the Government filed W.P.No.427 of 2004 and also obtained stay of the order of the Tribunal, ultimately, the writ petition was dismissed on 16.02.2005. The notification in G.O.Ms.No.6, dated 08.03.2005, to amend the recruitment rules, relating to the post of JCIF / Chief Principal, Group 'A' (Senior Scale) was published on 15.03.2005. On the said date, the second respondent / applicant was transferred and posted as Principal, Group 'A' (Senior Scale) to the Government ITI, T.R.Pattinam, Karaikal, from the

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post of JCIF, Pondicherry. Challenging the said order, the second respondent / applicant filed O.A.No.218 of 2005, before the Central Administrative Tribunal.

5. In the aforesaid Original Application, filed against the order of the petitioners, the following relief had been sought for by the petitioners therein.

1. to set aside the impugned order passed in No.3550/Lab/Estt./A1/2005, dated 15.03.2005 by the Government of Pondicherry, Labour Department ; and

2. to direct the petitioners to post the second respondent herein as Joint Chief Inspector of Factories, Pondicherry, as per the direction of the Tribunal, which was upheld by the High Court of Madras, at Chennai.

6. The Tribunal has allowed the O.A.No.218 of 2005 and set aside the order, dated 15.03.2005 passed by the petitioners herein and also directed them to post the second respondent herein as JCIF, within the specified time limit. Aggrieved by which, the petitioners have preferred the writ petition in W.P.No.44921 of 2006.

7. In O.A.No.814 of 2005, relating to W.P.No.44922 of 2006, the petitioners herein have challenged the revised recruitment rules introduced by G.O.Ms.No.6, dated 08.03.2005, equating the two posts, namely, Joint Chief Inspector of Factories (JCIF) and Principal, Group 'A' (Senior Scale) and also to set aside the impugned Recruitment Rules issued in G.O.Ms.No.6, dated 08.03.2005 equating the post of Principal Group 'A' (Senior Scale) with that of the post of Joint Chief Inspector of Factories.

8. The Administrative Tribunal, has held that the amended rules are arbitrary and violative of Articles 14 and 16 of the Constitution of India. According to the Tribunal, the purpose for bringing the amended rules was not germane, but was directed only to achieve a different purpose and accordingly, allowed the Original Application and set aside the recruitment rules made in G.O.Ms.No.6, dated 08.03.2005, which was introduced for the purpose of equating the post of Principal, Group 'A' (Senior Scale) with the post of JCIF. Aggrieved by which, W.P.No.44922 of 2006 has been preferred by the petitioners herein.

9. It is seen that the second respondent herein has raised two grounds for consideration of the Original Application before the Tribunal :

1. The order of transfer is made on malafide grounds and therefore is liable to be set aside.

2. The post of JCIF and Principal, Group 'A' (Senior Scale) cannot be equated and that the second respondent has challenged the recruitment rules and that the same was also allowed in his favour.

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10. It is not in dispute that the second respondent herein was promoted and posted as Principal, Group 'A' on 25.08.1989 itself and subsequently, he was promoted to the post of JCIF, by an order, dated 26.07.2001. While, the second respondent was holding the post of JCIF, the third respondent was only promoted as Principal, Group 'A' (Junior Scale), admittedly, not an equivalent cadre to that of JCIF, but was only a feeder category.

11. Mr.K.K.Sasidharan, learned Government Pleader (Pondicherry) appearing for the petitioners contended that as per G.O.Ms.No.26, dated 17.09.2001, the department has created the post of Principal, Group 'A' (Senior Scale), in order to facilitate the filling up of the said post, for which draft recruitment rules have been prepared. Though the post of Principal, ITI, Karaikal was originally Principal, Group 'A' (Junior Scale) shown as feeder cadre to the post of JCIF, subsequently, it was made as Principal, Group 'A" (Senior Scale). According to him, in order to create more promotional avenues in the department and also keeping in mind, the guidelines issued by the Central Vigilance Commissioner, the post of Principal, Group 'A' (Senior Scale) was created with the same pay scale of JCIF and hence, it was only a transfer and that the second respondent cannot question the order of transfer.

12. Per contra, Mr.Karthik Mukundan, learned counsel appearing for the second respondent contended that Mr.Krishnamurthy, the third respondent herein was posted as JCIF, even without undergoing any DPC selection process, but solely based on the draft recruitment rules, though, he was only in the feeder category as Principal, Group 'A' (Junior Scale). By amending the rules, Mr.Krishnamurthy, who had been in the feeder cadre of Principal, Group 'A' was posted as JCIF and the second respondent, who was already promoted from the cadre of Principal, Group 'A' and holding the post of JCIF was again posted as Principal, Group 'A', merely on the ground of the amendment to the rule and also fixed equal pay scale, which is violative of Articles 14 and 16 of the Constitution of India, as ruled in various decisions rendered by the Hon'ble Apex Court.

13. According to the learned counsel for the second respondent, the pay scale alone cannot be the sole criteria to equate the post of JCIF and Principal, Group 'A' (Senior Scale), but without considering the four vital factors set out by the Hon'ble Supreme Court for the purpose of equation of posts, the impugned Government Order has been passed. According to him, JCIF is an isolated post, next below the rank of Chief Inspector of Factories, whereas the post of Principal Group 'A' is an excadre post, to an institution of Industrial Training and the post of JCIF is attached with the duties and responsibilities of greater importance, especially involving the Enforcement of Factories Act, Boilers Act and Indian Boilers Regulation of the Government of India, whereas the post of Principal, Group 'A' (Senior Scale) is attached with the duties and responsibilities of a limited sphere and control over an institution,

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as such the powers are confined only as a Head of the Institute. While the post of JCIF requires a minimum qualification of Degree in Mechanical / Industrial / Chemical Engineering, the post of Principal Group 'A' requires either Degree or Diploma in Engineering. The post of JCIF is governed by the Recruitment Rules from 1984 onwards, whereas there is no Recruitment Rules governing the post of Principal, Group 'A' (Senior Scale). It is further contended that the rule was brought into existence for extraneous reasons, with ulterior motive to set at naught the decision of the Court and to bring back the third respondent herein from the post of Principal, Group 'A' to the post of JCIF and send back the second respondent to the said post, which was already held by him, prior to his promotion as JCIF, violating the law laid down by the Hon'ble Apex Court.

14. The following decisions were cited to decide the question of law involved in these writ petitions.

1. Ishwar Dutt vs. Land Acquisition Collector, 2005 (7) SCC 190
2. Ramadhar Shrivas vs. Bhagwandas, 2005 (9) SCALE 114
3. Pondicherry Khadi & Village Industries Board vs. P.Kulothangan, 2004 (1) SCC 68.
4. Sub-Inspector Rooplal vs. Lt.Governor, 2000 (1) SCC 644.
5. P.U.Joshi vs. Accountant General, 2003 (2) SCC 632.
6. A.P.Co-op.Oil S.G.F.L. vs. D.Achyuta Rao, 2007 (4) SCALE 382.

15. In the decision A.P.Co-op.Oil S.G.F.L. vs. D.Achyuta Rao, reported in 2007 (4) SCALE 382, the Hon'ble Supreme Court has held as follows :

> "The management acted in exercise of its authority to grant promotions. The action of the Management in granting promotions must be determined on the touchstone of Articles 14 and 16 of the Constitution of India. If the grant of promotions is found to be arbitrary or unreasonable, it must be held that such promotions will not affect the right of seniority of the persons concerned, since the promotions were granted neither in accordance with any rule nor by following norms consistent with principles incorporated in Articles 14 and 16 of the Constitution of India. The High Court has very critically analysed the facts of the case. It has found as a fact that there was no clear cut promotion policy either in the Federation or in the Unions. "

In the above decision, the Hon'ble Apex Court has categorically held that even in the matter of promotion, the management should not violate the mandate under Articles 14 and 16 of the Constitution of India.

16. In the decision Ishwar Dutt vs. Land Acquisition Collector, reported in 2005 (7) SCC 190, the Hon'ble Supreme Court has held that "the principle of res judicata is a species of the principle of estoppel. When a proceeding based on a particular cause of action has attained finality,

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the principle of res judicata shall fully apply. Cause of action for estoppel arises, where the cause of action in the later proceedings is identical to that of the earlier proceedings between the same parties and having involved the very same subject matter. In such a case, the bar is absolute in relation to all the points, which was decided, unless fraud or collusion is alleged, such as to justify in setting aside the earlier judgment."

17. It is not in dispute that O.A.No.869 of 2003 was filed by the second respondent herein, challenging the order of transfer to the post of Principal, Group 'A', since he was promoted from the said post and holding the higher post and his junior was posted as JCIF in the guise of transfer as JCIF. It is seen that the Administrative Tribunal has allowed the application and set aside the order passed by the petitioners herein. Aggrieved by which, the petitioners herein filed the writ petition in W.P.No.427 of 2004, and this Court by order, dated 16.02.2005, has accepted the contentions raised by the second respondent herein. Admittedly, the second respondent was promoted to the post of JCIF from the feeder category of Principal, Group 'A' and again he was posted as Principal, Group 'A', by an order styled as an order of transfer. According to the learned counsel for the second respondent, virtually the effect of such order amounts to demotion.

18. It has been admitted that the promotion of the second respondent herein, as JCIF was unsuccessfully challenged by Mr.P.S.Krishnamurthy, the third respondent, but he could not get the promotion as JCIF in the normal course. After the passing of the impugned G.O, equating the two posts, by way of transfer, the third respondent had been managed to be posted in the said cadre of JCIF and the person, who was already promoted on regular basis, as per procedure and also holding the post was again sent back to the erstwhile feeder category, in the name of transfer, by way of amending the rules, thereby equating the post of JCIF with that of Principal, Group 'A' (Senior Scale). It has been contended by the second respondent that though the Principal Group 'A' (Senior Scale) may have the same scale of pay, the post initially being a feeder category for the promotion of JCIF, must be construed only an inferior post to JCIF. This Court by order, dated 16.02.2005 made in W.P.No. 427 of 2004 has held as follows :

> " The facts and circumstances of the case clearly indicate that the present Respondent No.2 was being sent as Principal, Group 'A' Senior Scale in a leave vacancy. There is no dispute that the person in whose leave vacancy the present Respondent No.2 was sought to be posted was much junior, not yet entitled to Principal, Group 'A' Senior Scale. Even assuming that such post was made similar by the Government, nothing has been indicated as to why the present Respondent No.2, who was regularly promoted to the post of JCIF was posted to the leave vacancy, instead of sending the present Respondent No.3, who was still continuing

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> in the Principal, Group 'A' Junior Scale. The Tribunal has rightly observed that what could not be directly achieved was ought to be achieved by the present process."

With the above observation, the writ petition filed by the petitioners herein was dismissed, confirming the order passed by the Tribunal, in favour of the second respondent.

19. We are of the considered view that the decisions rendered by the Hon'ble Apex Court in Ishwar Dutt vs. Land Acquisition Collector, reported in 2005 (7) SCC 190 and Pondicherry Khadi & Village Industries Board vs. P.Kulothangan, reported in 2004 (1) SCC 68 referred to above are squarely applicable in the facts and circumstances of this case.

20. In Sub-Inspector Rooplal vs. Lt.Governor, reported in 2000 (1) SCC 644, the Hon'ble Supreme Court referring the decision, Union of India vs. P.K.Roy, reported in AIR 1968 SC 850, has held that equation of post has to be determined by taking into account the following factors – (i) nature and duties of post; (ii) responsibilities and powers exercised by officer holding a post; extent of territorial or other charge held or responsibilities discharged; (iii) minimum qualifications, if any, prescribed for recruitment to the post; and (iv) salary of the post. As per this judgment, it has been made clear that the salary of post is only the last criteria for the purpose of finding equivalence of posts, but not the sole criteria.

21. It has been clearly admitted that Principal, Group 'A' was only a feeder category to JCIF. When the second respondent was promoted as JCIF, there is no change in the nature and duties of the said posts. The responsibilities and powers exercised by officers holding the post of JCIF and Principal, Group 'A' (Senior Scale) have got no change even after the impugned G.O. The minimum qualification prescribed for the recruitment of the aforesaid post are also different, as discussed earlier in this order. In fact, the petitioners herein have not disputed the aforesaid contentions of the second respondent, in their reply statement filed before the Tribunal, with regard to the said four factors. Therefore, it is quite clear that the post of Principal, Group 'A' which was originally a feeder category for JCIF has been equated by the petitioners, without considering responsibilities, nature and duties of the said posts and the difference in the minimum required qualification already prescribed for both the posts and hence, it would be violative of mandate under Articles 14 and 16 of the Constitution of India.

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22. It is an admitted fact that JCIF is next to the Chief Inspector of Factories, as held in the impugned orders. The Tribunal has clearly extracted the duties and functions of JCIF and Principal, Group 'A' (Senior Scale). But, without making any change in the nature of duties, powers, responsibilities and the minimum qualification prescribed for the aforesaid two posts, the petitioners herein, merely considering the equal pay drawn by the said officers, has equated the posts and pursuant to the same, transferred the second respondent, who was holding comparatively superior post of JCIF to the post of Principal, Group 'A', which was already held by him prior to his promotion and the third respondent, who was an unsuccessful candidate in getting JCIF has been posted as JCIF, under the guise of equating the posts and on the ground of transfer.

23. It is not in dispute that the post of Principal, Group 'A' was originally a feeder category to JCIF and the second respondent was promoted from the said post to JCIF, as per the procedure known to law. Mr.P.S.Krishnamurthy, the third respondent, who was unsuccessful in getting promotion as JCIF, has been posted as JCIF and the second respondent has been reposted as Principal, Group 'A', by an indirect way, under the guise of transfer by passing the impugned Government Order, equating JCIF and Principal, Group 'A', but without making any change regarding the nature of duties, powers and responsibilities, which are primarily required for equating the posts, in the light of the ruling of the Hon'ble Apex Court referred to above.

24. In the facts and circumstances, we are of the considered view that the alleged transfer is violative of Articles 14 and 16 of the Constitution of India, as it would deprive virtually the status and importance of the second respondent, a senior officer and providing the same to the third respondent, a junior officer, who was in the feeder category, by way of back door entry, by adopting illegal procedures, in order to circumvent the earlier directions of this Court and the Tribunal. At this juncture, we feel it appropriate to cite a judgment of the Hon'ble Apex Court in State of Haryana and others vs. Ramkumar and others (2002 (9) SCC 703), wherein it has been held that "the administrative orders cannot overturn a judicial order".

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25. Therefore, we are of the considered view that there is no error or infirmity in the order passed by the Central Administrative Tribunal in allowing the aforesaid two Original Applications and the writ petitions in W.P.No.44921 and 44922 of 2006 accordingly fail and are liable to be dismissed.

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26. In the result, both the writ petitions are dismissed with costs. The petitioners herein are directed to pay a sum of Rs.10,000/- to the second respondent towards the cost of the writ petitions. The petitioners are further directed to comply with the orders of the Central Administrative Tribunal, within a period of six weeks from the date of receipt of the copy of this order.

Sd/
Asst.Registrar

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Sub Asst.Registrar

tsvn

To

1. The Registrar
   Central Administrative Tribunal
   Additional Bench, Madras.

2. The Secretary
   Union Public Service Commission
   Dholpur House, New Delhi.

2 cc To Mr.Karthick, Advocate, SR.65121.
2 cc To The Senior Government Pleader, SR.65062 & 65063.

W.P.Nos.44921 and 44922 of 2006

RA(CO)
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